

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

PRIORITY SEND  
JS-6

CIVIL MINUTES -- GENERAL

Case No. **CV 11-6608-JFW (MANx)**

Date: August 31, 2011

Title: John Cordova -v- The Boeing Company, et al.

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**PRESENT:**

**HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE**

**Shannon Reilly**  
**Courtroom Deputy**

**None Present**  
**Court Reporter**

**ATTORNEYS PRESENT FOR PLAINTIFFS:**

None

**ATTORNEYS PRESENT FOR DEFENDANTS:**

None

**PROCEEDINGS (IN CHAMBERS):**

**ORDER REMANDING ACTION TO LOS ANGELES  
COUNTY SUPERIOR COURT**

On January 26, 2011, Plaintiff John Cordova ("Plaintiff") filed a Complaint against Defendant The Boeing Company in Los Angeles County Superior Court. On March 4, 2011, Defendant The Boeing Company ("Boeing") filed its first Notice of Removal, alleging that this Court has jurisdiction pursuant to 28 U.S.C. § 1332(a). On March 21, 2011, the Court remanded the action for failure to properly allege Plaintiff's citizenship. On August 11, 2011, Boeing filed its second Notice of Removal, again alleging that this Court has jurisdiction pursuant to 28 U.S.C. § 1332(a).

Federal courts are courts of limited jurisdiction, having subject matter jurisdiction only over matters authorized by the Constitution and Congress. See *Bender v. Williamsport Area School District*, 475 U.S. 534, 541 (1986). "Because of the Congressional purpose to restrict the jurisdiction of the federal courts on removal, the statute is strictly construed, and federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance." *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996) (citations and quotations omitted). There is a strong presumption that the Court is without jurisdiction unless the contrary affirmatively appears. See *Fifty Associates v. Prudential Insurance Company of America*, 446 F.2d 1187, 1190 (9th Cir. 1990). As the party invoking federal jurisdiction, Boeing bears the burden of demonstrating that removal is proper. See, e.g., *Gaus v. Miles*, 980 F.2d 564, 566 (9th Cir. 1992); *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988).

Diversity jurisdiction founded under 28 U.S.C. § 1332(a) requires that (1) all plaintiffs be of different citizenship than all defendants, and (2) the amount in controversy exceed \$75,000. See 28 U.S.C. § 1332. Because Boeing has not met its burden of demonstrating that the parties are completely diverse and that Defendant Douglas Flannery has been fraudulently joined, this action shall be remanded.

According to Boeing's Notice of Removal, both Plaintiff and Defendant Douglas Flannery are citizens of California. Boeing argues, however, that Defendant Flannery has been fraudulently

joined, and thus that his presence in the lawsuit should be ignored.

“Although an action may removed to federal court only where there is complete diversity of citizenship, . . . one exception to the requirement for complete diversity is where a non-diverse defendant has been ‘fraudulently joined.’” *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1043 (9th Cir. 2009) (quotations and citations omitted). If the plaintiff “fails to state a cause of action against a resident defendant, and the failure is obvious according to the *settled* rules of the state, the joinder of the resident defendant is fraudulent.” *McCabe v. Gen. Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987) (emphasis added). If the Court finds that the joinder of a non-diverse defendant is fraudulent, that defendant’s presence in the lawsuit is ignored for the purposes of determining diversity. See, e.g., *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001).

“There is a presumption against finding fraudulent joinder, and defendants who assert that plaintiff has fraudulently joined a party carry a heavy burden of persuasion.” *Plute v. Roadway Package Sys., Inc.*, 141 F. Supp. 2d 1005, 1008 (N.D. Cal. 2001). A claim of fraudulent joinder should be denied if there is *any possibility* that the plaintiffs may prevail on the cause of action against the in-state defendant. See *id.* at 1008, 1012. “The standard is not whether plaintiffs will actually or even probably prevail on the merits, but whether there is a *possibility* that they may do so.” *Lieberman v. Meshkin, Mazandarani*, 1996 WL 732506, at \*3 (N.D. Cal. Dec. 11, 1996) (emphasis added). “In determining whether a defendant was joined fraudulently, the court must resolve ‘all disputed questions of fact and all ambiguities in the controlling state law in favor of the non-removing party.’” *Plute*, 141 F. Supp. 2d at 1008 (quoting *Dodson v. Spiliada Maritime Corp.*, 951 F.2d 40, 42-43 (5th Cir. 1992)). Moreover, any doubts concerning the sufficiency of a cause of action due to inartful, ambiguous, or technically defective pleading must be resolved in favor of remand. See *id.*

The Court finds that Boeing has not carried its heavy burden of demonstrating that Defendant Douglas Flannery has been fraudulently joined. In his Complaint filed on January 26, 2011, Plaintiff asserts only one claim for intentional infliction of emotional distress against Defendant Flannery. Boeing claims that Plaintiff cannot possibly prevail on this claim for relief against Defendant Flannery because the conduct alleged does not constitute extreme and outrageous conduct and Plaintiff is attempting to circumvent FEHA’s prohibition against suing individual employees for alleged discriminatory acts.

The Court cannot conclude at this stage that Plaintiff has no possibility of stating a claim for intentional infliction of emotional distress against Defendant Flannery. See, e.g., *Vincent v. First Republic Bank Inc.*, 2010 WL 1980223, at \*4 (N.D. Cal. May 17, 2010) (“While plaintiff’s allegations may fall short of proving outrageous conduct, this order cannot conclude that plaintiff has absolutely no possibility of stating a claim, if afforded an opportunity to amend.”); *Barsell v. Urban Outfitters, Inc.*, 2009 WL 1916495, at \*7 (C.D. Cal. July 1, 2009) (“District courts have also granted motions to remand where the complaint failed to allege outrageous conduct, because it was possible that plaintiff could cure the deficiency by amendment.”).

Accordingly, this action is **REMANDED** to Los Angeles County Superior Court for lack of subject matter jurisdiction. See 28 U.S.C. § 1447(c).

IT IS SO ORDERED.